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I

110TH CONGRESS  
1ST SESSION

# H. R. 2549

To amend section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2007

Mr. TANNER (for himself, Mr. ENGLISH of Pennsylvania, Mr. VAN HOLLEN, and Mr. REYNOLDS) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Medicare Secondary  
5 Payer and Workers' Compensation Settlement Agree-  
6 ments Act of 2007".

1 SEC. 2. APPLICATION OF MEDICARE SECONDARY PAYER  
2 RULES TO CERTAIN WORKERS' COMPENSA-  
3 TION SETTLEMENT AGREEMENTS AND  
4 QUALIFIED MEDICARE SET-ASIDE PROVI-  
5 SIONS.

6 (a) EXCEPTION FROM SECONDARY PAYER PROVI-  
7 SIONS FOR CERTAIN WORKERS' COMPENSATION SETTLE-  
8 MENT AGREEMENTS.—Section 1862 of the Social Security  
9 Act (42 U.S.C. 1395y) is amended—

14       “(l) EXCEPTION FROM SECONDARY PAYER PROVI-  
15    SIONS FOR CERTAIN WORKERS’ COMPENSATION SETTLE-  
16    MENT AGREEMENTS.—

17           “(1) IN GENERAL.—A workers’ compensation  
18        law or plan shall not be treated, for purposes of sub-  
19        section (b), as a primary plan with respect to an ex-  
20        empt workers’ compensation settlement agreement.

“(2) EXEMPT WORKERS’ COMPENSATION SET-  
TLEMENT AGREEMENT DEFINED.—For purposes of  
this subsection, an ‘exempt workers’ compensation  
settlement agreement’ means a workers’ compensa-  
tion agreement that is described in any of the fol-  
lowing subparagraphs:

1                 “(A) PRESENT VALUE OF LESS THAN  
2                 \$250,000.—A workers’ compensation settlement  
3                 agreement that has a present value, as deter-  
4                 mined under paragraph (3)(A), that is less than  
5                 the greater of the following:

6                     “(i) \$250,000.

7                     “(ii) The product (as published under  
8                 paragraph (3)(B)) of \$250,000 and the  
9                 ratio of—

10                    “(I) the national average wage  
11                 index (as defined in section 209(k)(1)  
12                 of the Social Security Act) for the cal-  
13                 endar year before the calendar year in  
14                 which the workers’ compensation set-  
15                 tlement agreement became effective,  
16                 to

17                    “(II) the national average wage  
18                 index for 2005,

19                 with such product, if not a multiple of  
20                 \$1,000, being rounded to the next higher  
21                 multiple of \$1,000.

22                 “(B) COMPROMISE AGREEMENT.—A work-  
23                 ers’ compensation settlement agreement that is  
24                 a compromise agreement (as defined in para-  
25                 graph (5)) that has a present value that is not

1 more than 20 percent of the present value of  
2 the total amount that could have been payable  
3 under the applicable workers' compensation law  
4 or similar plan if the claim involved had not  
5 been subject to a compromise agreement.

6                 “(C) LIKELY INELIGIBILITY OF WORKERS'  
7 COMPENSATION CLAIMANT FOR MEDICARE BEN-  
8 EFITS.—A workers' compensation settlement  
9 agreement the claimant of which is not eligible  
10 for benefits under this title as of the effective  
11 date of the agreement and, under paragraph  
12 (4), is unlikely to become so eligible within 30  
13 months after such effective date.

14                 “(D) NO FUTURE MEDICAL EXPENSES.—A  
15 workers' compensation settlement agreement  
16 the claimant of which is not eligible for pay-  
17 ment of medical expenses incurred after the ef-  
18 fective date of such agreement that are avail-  
19 able under the workers' compensation law or  
20 plan of the jurisdiction in which such agree-  
21 ment will be effective.

22                 “(E) NO LIMITATION ON FUTURE MEDICAL  
23 EXPENSES.—A workers' compensation settle-  
24 ment agreement that does not limit or extin-  
25 guish the right of the claimant involved to pay-

1           ment of medical expenses incurred after the ef-  
2           fective date of such agreement that are avail-  
3           able under the workers' compensation law or  
4           plan of the jurisdiction in which such agree-  
5           ment will be effective.

6           “(3) DETERMINATION OF PRESENT VALUE OF  
7       WORKERS’ COMPENSATION SETTLEMENT AGREEMENT.—  
8

9                         “(A) BY COST OF ANNUITY TO FUND  
10                         AGREEMENT.—

11                         “(i) IN GENERAL.—Subject to clause  
12                         (ii), for purposes of paragraphs (2)(A) and  
13                         (2)(B) and subsection (m) and with re-  
14                         spect to a work-related injury or illness  
15                         that is the subject of a workers’ compensa-  
16                         tion settlement agreement, the present  
17                         value of the agreement is the sum of any  
18                         of the following amounts that are used to  
19                         fund the agreement:

1                         “(III) The amount of the sum of  
2                         any funds under subclause (I) or (II),  
3                         previously paid pursuant to a workers'  
4                         compensation settlement agreement  
5                         involved in the workers' compensation  
6                         claim involved.

7                         “(ii) COSTS EXCLUDED FROM  
8                         PRESENT VALUE.—The present value of a  
9                         workers' compensation settlement agree-  
10                         ment does not include the following pay-  
11                         ments made because of the workers' com-  
12                         pensation claim involved:

13                         “(I) Payments to satisfy previous  
14                         unpaid medical expenses.

15                         “(II) Payments to satisfy third  
16                         party claims or liens for amounts pre-  
17                         viously paid, such as payments under  
18                         this title, payments under the Medi-  
19                         caid program under title XIX, pay-  
20                         ments under a program of the De-  
21                         partment of Veterans Affairs under  
22                         title 38, United States Code, pay-  
23                         ments under an employee welfare ben-  
24                         efit plan (as defined in section 3(1) of  
25                         the Employee Retirement and Income

Security Act of 1974), and other similar third party payments.

“(III) The attorney fees for the  
claimant involved.

“(IV) Any other procurement costs incurred by a party to the agreement to secure the agreement.

8                 “(B) PUBLICATION IN FEDERAL REGISTER  
9                 OF AMOUNT OF PRESENT VALUE ADJUSTED  
10                 FOR INFLATION.—Not later than November 15  
11                 of each year (beginning with 2007), the Sec-  
12                 retary shall determine and provide for publica-  
13                 tion in the Federal Register of the amount de-  
14                 scribed in paragraph (2)(A)(ii) for the suc-  
15                 ceeding year.

16                 “(4) DETERMINATION OF LIKELY INELIGI-  
17                 BILITY OF CLAIMANT FOR MEDICARE BENEFITS.—  
18                 For purposes of paragraph (2)(C), a workers' com-  
19                 pensation claimant shall be deemed unlikely to be-  
20                 come eligible for benefits under this title unless, as  
21                 of the effective date of the agreement, such claimant  
22                 is insured for disability insurance benefits as deter-  
23                 mined under subsection (c)(1) of section 223 and  
24                 meets any of the following requirements:

1                 “(A) AWARDED OR APPEALING DENIAL OF  
2                 DISABILITY BENEFITS.—The claimant has been  
3                 awarded disability insurance benefits or is ap-  
4                 pealing a denial of such benefits under sub-  
5                 section (a) of such section.

6                 “(B) MINIMUM AGE.—The claimant is at  
7                 least 62 years and 6 months of age.

8                 “(C) END STAGE RENAL DISEASE.—The  
9                 claimant is medically determined to have end  
10                 stage renal disease, but does not as of such  
11                 date qualify for benefits under this title by rea-  
12                 son of such disease.

13                 “(5) DEFINITIONS.—For purposes of this sub-  
14                 section and subsection (m):

15                 “(A) WORKERS’ COMPENSATION SETTLE-  
16                 MENT AGREEMENT.—The term ‘workers’ com-  
17                 pensation settlement agreement’ means an  
18                 agreement, including a commutation agreement  
19                 or compromise agreement, between a workers’  
20                 compensation claimant and one or more work-  
21                 ers’ compensation payers which is intended—

22                         “(i) to foreclose the possibility of fu-  
23                 ture payment of some or all workers’ com-  
24                 pensation benefits involved; and

1                 “(ii)(I) to compensate the claimant  
2                 for a work-related injury or illness as pro-  
3                 vided for by a workers’ compensation law  
4                 or plan; or

5                 “(II) to eliminate cause for litigation  
6                 involving issues in dispute between the  
7                 claimant and payer.

8                 “(B) WORKERS’ COMPENSATION PAYER.—

9                 The term ‘workers’ compensation payer’ means,  
10                 with respect to a workers’ compensation law or  
11                 plan, a workers’ compensation insurer, self-in-  
12                 surer, employer, individual, or any other entity  
13                 that is or may be liable for the payment of ben-  
14                 efits to a workers’ compensation claimant pur-  
15                 suant to the workers’ compensation law or plan.

16                 “(C) WORKERS’ COMPENSATION CLAIM-  
17                 ANT.—The term ‘workers’ compensation claim-  
18                 ant’ means a worker who—

19                 “(i) is or may be covered under a  
20                 workers’ compensation law or plan (or  
21                 similar compensation plan); and

22                 “(ii) submits a claim or accepts bene-  
23                 fits under such law or plan (or similar  
24                 compensation plan) for a work-related in-  
25                 jury or illness.

1                   “(D) WORKERS’ COMPENSATION LAW OR  
2 PLAN.—

3                   “(i) IN GENERAL.—The term ‘workers’ compensation law or plan’ means a  
4 law or program administered by a State or  
5 the United States to provide compensation  
6 to workers for a work-related injury or ill-  
7 ness (or for disability or death caused by  
8 such an injury or illness), including the  
9 Longshore and Harbor Workers’ Com-  
10 pensation Act (33 U.S.C. 901–944, 948–  
11 950), chapter 81 of title 5, United States  
12 Code (known as the Federal Employees  
13 Compensation Act), the Black Lung Bene-  
14 fits Act (30 U.S.C. 931 et seq.), and part  
15 C of title 4 of the Federal Coal Mine and  
16 Safety Act (30 U.S.C. 901 et seq.), but not  
17 including the Act of April 22, 1908 (45  
18 U.S.C. 51 et seq.) (popularly referred to as  
19 the Federal Employer’s Liability Act).

20                   “(ii) INCLUSION OF SIMILAR COM-  
21 PENSATION PLAN.—Such term includes a  
22 similar compensation plan established by  
23 an employer that is funded by such em-  
24 ployer or the insurance carrier of such em-

1                   ployer to provide compensation to a worker  
2                   of such employer for a work-related injury  
3                   or illness.

4                   “(E) COMPROMISE AGREEMENT.—The  
5                   term ‘compromise agreement’ means a workers’  
6                   compensation settlement agreement that—

7                         “(i) applies to a workers’ compensa-  
8                         tion claim that is denied or contested, in  
9                         whole or in part, by a workers’ compensa-  
10                         tion payer involved under the workers’  
11                         compensation law or plan (or similar com-  
12                         pensation plan) applicable to the jurisdic-  
13                         tion in which the agreement has been set-  
14                         tied; and

15                         “(ii) does not provide for a payment  
16                         of the full amount of benefits sought or  
17                         payable under the workers’ compensation  
18                         claim.

19                   “(F) COMMUTATION AGREEMENT.—The  
20                   term ‘commutation agreement’ means a work-  
21                         ers’ compensation settlement agreement to set-  
22                         tle all or a portion of a workers’ compensation  
23                         claim, in which—

24                         “(i) liability for past and future bene-  
25                         fits is not disputed; and

1                         “(ii) the parties to the agreement  
2                         agree to include payment for future work-  
3                         ers’ compensation benefits payable after  
4                         the date on which the agreement becomes  
5                         effective.”.

6                         (b) SATISFACTION OF SECONDARY PAYER REQUI-  
7                         REMENTS THROUGH USE OF QUALIFIED MEDICARE SET-  
8                         ASIDES UNDER WORKERS’ COMPENSATION SETTLEMENT  
9                         AGREEMENTS.—Section 1862 of the Social Security Act  
10                         (42 U.S.C. 1395y), as amended by subsection (a), is fur-  
11                         ther amended by adding at the end the following new sub-  
12                         section:

13                         “(m) TREATMENT OF QUALIFIED MEDICARE SET-  
14                         ASIDES UNDER WORKERS’ COMPENSATION SETTLEMENT  
15                         AGREEMENTS.—

16                         “(1) SATISFACTION OF SECONDARY PAYER RE-  
17                         QUIREMENTS THROUGH USE OF QUALIFIED MEDI-  
18                         CARE SET-ASIDES.—

19                         “(A) FULL SATISFACTION OF CLAIM OBLI-  
20                         GATIONS.—

21                         “(i) IN GENERAL.—If a workers’ com-  
22                         pensation settlement agreement, related to  
23                         a claim of a workers’ compensation claim-  
24                         ant, includes a qualified Medicare set-  
25                         aside, such set-aside shall satisfy any obli-

gation with respect to the present or future payment reimbursement under subsection (b)(2), with respect to such claim. The Secretary shall have no further recourse, directly or indirectly, upon a workers' compensation claimant or workers' compensation payer who is a party to such agreement.

“(ii) RULE OF CONSTRUCTION.— Nothing in this section shall be construed as requiring the submission of a Medicare set-aside to the Secretary.

“(B) MEDICARE SET-ASIDE AND MEDICARE SET-ASIDE AMOUNT DEFINED.—For purposes of this subsection:

“(i) MEDICARE SET-ASIDE.—The term ‘Medicare set-aside’ means, with respect to a workers’ compensation settlement agreement, a provision in the agreement that provides for a payment of a lump sum, annuity, a combination of a lump sum and an annuity, or other amount that is in full satisfaction of the obligation described in subparagraph (A) for items and services that the workers’

1 compensation claimant under the agree-  
2 ment received or is likely to receive under  
3 the applicable workers' compensation law  
4 and for which payment would be made  
5 under this title, but for subsection  
6 (b)(2)(A).

7                 “(ii) MEDICARE SET-ASIDE  
8 AMOUNT.—The term ‘Medicare set-aside  
9 amount’ means, with respect to a Medicare  
10 set-aside, the amount described in clause  
11 (i).

12                 “(2) QUALIFIED MEDICARE SET-ASIDE.—

13                 “(A) REQUIREMENTS OF QUALIFIED MEDI-  
14 CARE SET-ASIDE.—For purposes of this sub-  
15 section, the term ‘qualified Medicare set-aside’  
16 is a Medicare set-aside in which the Medicare  
17 set-aside amount reasonably takes into account  
18 the full payment obligation described in para-  
19 graph (1)(A), consistent with subparagraphs  
20 (B) and (C) and giving due consideration to the  
21 following:

22                 “(i) The illness or injury giving rise to  
23 the workers’ compensation claim involved.

24                 “(ii) The age and life expectancy of  
25 the claimant involved.

1                 “(iii) The reasonableness of and ne-  
2                 cessity for future medical expenses for  
3                 treatment of the illness or injury involved.

4                 “(iv) The duration of and limitation  
5                 on benefits payable under the workers'  
6                 compensation law or plan involved.

7                 “(B) ITEMS AND SERVICES INCLUDED.—  
8                 The Medicare set-aside—

9                 “(i) shall include payment for items  
10                 and services that are authorized for pay-  
11                 ment under this title as of the effective  
12                 date of the workers' compensation settle-  
13                 ment agreement involved and that are cov-  
14                 ered by the workers' compensation law or  
15                 plan involved; and

16                 “(ii) is not required to provide for  
17                 payment for items and services that are  
18                 not described in clause (i).

19                 “(C) PAYMENT REQUIREMENTS.—

20                 “(i) REQUIRED USE OF WORKERS'  
21                 COMPENSATION FEE SCHEDULE.—

22                 “(I) IN GENERAL.—Except in the  
23                 cases of a deep discount compromise  
24                 agreement defined in clause (iii)(II), a  
25                 Medicare set-aside deemed a qualified

Medicare set-aside under paragraph (4)(A), or an optional direct payment of a Medicare set-aside made under paragraph (6)(A), the set-aside amount shall be based upon the payment amount for items and services under the workers' compensation fee schedule (effective as of the date of the agreement) applicable to the workers' compensation law or plan involved.

imbursement rate under such law or plan).

“(ii) REQUIRED PAYMENT ADJUST-  
T FOR CERTAIN FEES.—The Medicare  
aside amount otherwise computed shall  
reduced by—

“(I) the amount of the direct costs and expenses incurred in establishing, administering, or securing approval for the Medicare set-aside; and

“(II) the proportional share of other costs and expenses (including fees for attorneys, third-party vendors, and administrators) incurred by the claimant or payer in entering into the workers’ compensation settlement agreement involved.

“(iii) OPTIONAL ADJUSTMENT FOR  
P DISCOUNT COMPROMISE AGREEMENT  
TS —

**“(I) IN GENERAL.—**Notwithstanding clause (i), in the case of a deep discount compromise agreement, a workers’ compensation claimant or workers’ compensation payer who is

1 party to the agreement may elect (but  
2 is not required) to calculate the Medi-  
3 care set-aside amount of the agree-  
4 ment by applying the denied or con-  
5 tested percentage described in sub-  
6 clause (II) to the unadjusted Medicare  
7 set-aside amount for the denied or  
8 contested portion of the claim other-  
9 wise calculated before the application  
10 of clause (ii). Such election may be  
11 made by a party to the agreement  
12 only with the written consent of the  
13 other party to the agreement.

14 “(II) DEEP DISCOUNT COM-  
15 PROMISE AGREEMENT.—For purposes  
16 of this subsection, the term ‘deep dis-  
17 count compromise agreement’ means  
18 a compromise agreement in which the  
19 present value of the amount included  
20 in the agreement for the portion of  
21 the worker’s compensation claim in-  
22 volved that was denied or contested by  
23 the workers’ compensation payer in-  
24 volved is a percentage of more than  
25 20 percent, and less than 90 percent,

21               “(3) PROCESS FOR APPROVAL OF QUALIFIED  
22               MEDICARE SET-ASIDES —

23                 “(A) OPTIONAL PRIOR APPROVAL BY SEC-  
24                 RETARY.—A party to a workers’ compensation  
25                 settlement agreement that includes a Medicare

1 set-aside may submit to the Secretary the set-  
2 aside, including appropriate supporting docu-  
3 mentation specified by the Secretary, for ap-  
4 proval of the set-aside as a qualified Medicare  
5 set-aside. The set-aside shall be submitted in  
6 accordance with a procedure specified by the  
7 Secretary.

8                 “(B) AUTOMATIC APPROVAL UNLESS DIS-  
9 APPROVED.—A Medicare set-aside submitted  
10 under subparagraph (A) shall be deemed a  
11 qualified Medicare set-aside unless the Sec-  
12 retary determines and provides notice under  
13 subparagraph (C) that the Medicare set-aside  
14 does not satisfy the requirements of paragraph  
15 (2)(A) because the amount of the proposed  
16 Medicare set-aside is based on a substantial  
17 material error and is not supported by the doc-  
18 umentation submitted under subparagraph (A).

19                 “(C) NOTICE OF DETERMINATION OF DIS-  
20 APPROVAL.—Not later than 60 days after the  
21 date on which the Secretary receives a submis-  
22 sion under subparagraph (A), the Secretary  
23 shall notify in writing the parties to the work-  
24 ers’ compensation settlement agreement of the  
25 determination under subparagraph (B). If the

1 determination disapproves such submission the  
2 Secretary shall include with such notification  
3 the specific reasons for the disapproval. A de-  
4 termination that disapproves a submission is  
5 not valid if the determination does not include  
6 a specific explanation of each deficiency of the  
7 submission.

8       “(4) SAFE HARBOR FOR CERTAIN MEDICARE  
9 SET-ASIDES.—

10       “(A) IN GENERAL.—A Medicare set-aside  
11 of a workers’ compensation settlement agree-  
12 ment shall be deemed a qualified Medicare set-  
13 aside if the Medicare set-aside amount is the  
14 safe harbor amount for the agreement.

15       “(B) SAFE HARBOR AMOUNT DEFINED.—  
16 For purposes of this paragraph, the term ‘safe  
17 harbor amount’ means, for a workers’ com-  
18 pensation settlement agreement, 10 percent of  
19 the present value of the agreement (as deter-  
20 mined under subsection (l)(3)).

21       “(C) RULE OF CONSTRUCTION.—In the  
22 case of a workers’ compensation settlement  
23 agreement with a Medicare set-aside that is  
24 deemed a qualified Medicare set-aside under  
25 subparagraph (A), the fact that the workers’

1 compensation claimant or workers' compensa-  
2 tion payer involved may elect direct payment  
3 under paragraph (6)(A) or an adjustment  
4 under paragraph (2)(C)(iii) shall not be con-  
5 strued as prohibiting such claimant or payer  
6 from basing the set-aside amount on the safe  
7 harbor amount for such agreement.

8 “(5) APPEALS.—

9 “(A) IN GENERAL.—A party to a workers’  
10 compensation settlement agreement that is dis-  
11 satisfied with a determination under paragraph  
12 (3)(B), upon filing a request for reconsideration  
13 with the Secretary not later than 60 days after  
14 the date of notice of such determination, shall  
15 be entitled to—

16 “(i) reconsideration of the determina-  
17 tion by the Secretary (with respect to such  
18 determination);

19 “(ii) a hearing before an administra-  
20 tive judge thereon; and

21 “(iii) judicial review of the Secretary’s  
22 final determination after such hearing.

23 “(B) DEADLINES FOR DECISIONS.—

24 “(i) RECONSIDERATIONS.—

1                     “(I) IN GENERAL.—The Secretary shall conduct and conclude a reconsideration of a determination under paragraph (3)(B) and mail the notice of the decision of such reconsideration by not later than the last day of the 30-day period beginning on the date that a request for such reconsideration has been timely filed.

10                    “(II) APPEALS OF RECONSIDERATIONS.—If a party to the workers' compensation settlement involved is dissatisfied with the Secretary's decision under subclause (I), that party may file an appeal within the 30-day period after the date of receipt of the notice of the decision under such subclause and request a hearing before an administrative law judge.

20                    “(III) FAILURE BY SECRETARY TO PROVIDE NOTICE.—In the case of a failure by the Secretary to mail the notice of the decision under subclause (I) by the last day of the period described in such subclause, the party

1                   requesting the reconsideration may re-  
2                   quest a hearing before an administra-  
3                   tive law judge, notwithstanding any  
4                   requirements for a reconsideration of  
5                   a determination for purposes of the  
6                   party's right to such hearing.

7                   “(ii) HEARINGS.—

8                   “(I) IN GENERAL.—An adminis-  
9                   trative law judge shall conduct and  
10                  conclude a hearing on a decision of  
11                  the Secretary under clause (i) and  
12                  render a decision on such hearing by  
13                  not later than the last day of the 90-  
14                  day period beginning on the date that  
15                  a request for such hearing has been  
16                  timely filed.

17                  “(II) JUDICIAL REVIEW.—A deci-  
18                  sion under subclause (I) by an admin-  
19                  istrative law judge constitutes a final  
20                  agency action and is subject to judi-  
21                  cial review.

22                  “(III) FAILURE BY ADMINISTRA-  
23                  TIVE LAW JUDGE TO RENDER TIMELY  
24                  DECISION.—In the case of a failure by  
25                  an administrative law judge to render

1                   a decision under subclause (I) by the  
2                   last day of the period described in  
3                   such subclause, the party requesting  
4                   the hearing may seek judicial review  
5                   of the decision under clause (i), not-  
6                   withstanding any requirements for a  
7                   hearing for purposes of the party's  
8                   right to such judicial review.

9                 “(6) ADMINISTRATION OF MEDICARE SET-ASIDE  
10                PROVISIONS; PROTECTION FROM CERTAIN LIABIL-  
11                ITY.—

12                “(A) OPTIONAL DIRECT PAYMENT OF  
13                MEDICARE SET-ASIDE AMOUNT.—

14                “(i) ELECTION FOR DIRECT PAYMENT  
15                OF MEDICARE SET-ASIDE.—With respect to  
16                a claim for which a workers' compensation  
17                settlement agreement is established, a  
18                workers' compensation claimant or work-  
19                ers' compensation payer who is party to  
20                the agreement may elect, but is not re-  
21                quired, to transfer to the Secretary a di-  
22                rect payment of the qualified Medicare set-  
23                aside or an annuity purchased to directly  
24                fund the set-aside amount. With respect to  
25                a qualified Medicare set-aside paid directly

1 to the Secretary, the parties involved may  
2 calculate the Medicare set-aside amount of  
3 such set-aside using any of the following  
4 methods:

5 “(I) In the case of any Medicare  
6 set-aside deemed a qualified Medicare  
7 set-aside under paragraph (4)(A), the  
8 amount calculated in accordance with  
9 such paragraph.

10 “(II) In the case of any Medicare  
11 set-aside of a deep discount com-  
12 promise agreement under paragraph  
13 (2)(C)(iii), the amount calculated in  
14 accordance with such paragraph.

15 “(III) In the case of any Medi-  
16 care set-aside, the amount based upon  
17 the payment amount for items and  
18 services under the workers’ compensa-  
19 tion fee schedule (effective as of the  
20 date of the agreement) applicable to  
21 the workers’ compensation law or plan  
22 involved, in accordance with para-  
23 graph (2)(C)(i)(I).

24 “(IV) In the case of any Medi-  
25 care set-aside, the payment amount

1                   applicable to the items and services  
2                   under this title as in effect on the ef-  
3                   fective date of the agreement.

4                   Such transfer shall be in accordance with  
5                   a procedure established by the Secretary  
6                   and shall be made only upon written con-  
7                   sent of the other party to the agreement.

8                   “(ii) ELECTION SATISFYING LIABIL-  
9                   ITY.—An election made under clause (i),  
10                  with respect to a qualified Medicare set-  
11                  aside shall satisfy any payment, in relation  
12                  to the underlying claim of the related  
13                  workers’ compensation settlement agree-  
14                  ment, required under subsection (b)(2) to  
15                  be made by the claimant or payer to the  
16                  Secretary. The Secretary shall have no fur-  
17                  ther recourse, directly or indirectly, upon a  
18                  workers’ compensation claimant or work-  
19                  ers’ compensation payer to the agreement.

20                  “(B) REQUIREMENT FOR TIMELY NOTICE  
21                  OF MEDICARE REPAYMENTS OWED BY WORK-  
22                  ERS’ COMPENSATION CLAIMANT OR PAYER TO  
23                  SECRETARY.—

24                  “(i) IN GENERAL.—Not later than 60  
25                  days after the date on which the Secretary

1 receives a request from a workers' com-  
2 pensation claimant or workers' compensa-  
3 tion payer for documentation of any condi-  
4 tional payment made under subsection  
5 (b)(2)(B)(i) on behalf of the claimant, the  
6 Secretary shall provide to the claimant or  
7 payer such documentation. Such docu-  
8 mentation shall be sufficient for the claim-  
9 ant or payer to make a reasonable deter-  
10 mination whether such a payment was for  
11 an item or service furnished in connection  
12 with the claimant's work related injury or  
13 illness involved. The claimant or payer may  
14 rely on the documentation provided under  
15 this clause in making such determination.  
16 Payment of the amount of the conditional  
17 payment, after deducting from such  
18 amount any procurement costs involved  
19 and any costs for unrelated and inappro-  
20 priate items or services, shall discharge  
21 further liability with respect to the condi-  
22 tional payment.

23           “(ii) LIABILITY FOR REIMBURSE-  
24 MENTS RELATED TO REQUESTED INFOR-  
25 MATION.—If the Secretary fails to provide

1 information in accordance with clause (i),  
2 then neither the claimant or the payer de-  
3 scribed in such clause shall be liable for  
4 any reimbursement under subsection  
5 (b)(2)(B) with respect to the conditional  
6 payment for which information was re-  
7 quested under such clause.

8 “(C) PROTECTION FROM CERTAIN LIABIL-  
9 ITY.—

10 “(i) LIABILITY FOR MEDICARE SET-  
11 ASIDE PAYMENT GREATER THAN PAYMENT  
12 UNDER WORKERS’ COMPENSATION LAW.—

13 No workers’ compensation claimant, work-  
14 ers’ compensation payer, employer, admin-  
15 istrator of the Medicare set-aside, legal  
16 representative of the claimant, payer, em-  
17 ployer, or administrator, or any other  
18 party related to the claimant, payer, em-  
19 ployer, or administrator shall be liable for  
20 any payment amount established under a  
21 Medicare set-aside for an item or service  
22 provided to the claimant that is greater  
23 than the payment amount for the item or  
24 service established under the workers’ com-  
25 pensation fee schedule (or in the absence



for such an item or service in violation of such sentence, the Secretary may apply sanctions against the provider in accordance with section 1842(j)(2) in the same manner as such section applies with respect to a physician. Paragraph (4) of section 1842(j) shall apply under this clause in the same manner as such paragraph applies under such section.

“(D) AUTHORITY TO MODIFY OR TERMINATE QUALIFIED MEDICARE SET-ASIDES.—

“(i) IN CASE OF DEATH OF CLAIMANT.—At any time after the death of a workers’ compensation claimant, an individual entitled (after such death) to disbursement of the funds remaining in the Medicare set-aside involved in the workers’ compensation claim of the claimant may submit to the Secretary a request to terminate the Medicare set-aside upon a showing of the death and payment of all claims that are subject to this subsection.

“(ii) IN THE CASE OF MEDICAL IMPROVEMENT OR CHANGE OF CIRCUMSTANCES.—At any time after the date

1                   that is five years after the date of qual-  
2                   ification of a Medicare set-aside involved,  
3                   the workers' compensation claimant in-  
4                   volved may submit to the Secretary a re-  
5                   quest to modify or terminate the Medicare  
6                   set-aside upon a showing of a substantial  
7                   medical improvement of the claimant, with  
8                   respect to the injury or illness involved, or  
9                   of changed circumstances of the claimant  
10                  that justify a reduction of the funds of the  
11                  Medicare set-aside (as in existence on the  
12                  date of such request) by at least 25 per-  
13                  cent.

14                             “(iii) NOTICE REQUIRED.—The Sec-  
15                             retary may not approve a request sub-  
16                             mitted under clause (i) or (ii) to modify or  
17                             terminate a Medicare set-aside unless the  
18                             workers’ compensation claimant involved or  
19                             the individual entitled to disbursement (as  
20                             described in clause (i)) includes with such  
21                             request the following:

ment sent notice of such request to any party that has a reversionary interest to such request and that is specifically designated in the Medicare set-aside for receipt of such notice.

“(II) Assurances satisfactory to the Secretary that such notice was sent by certified mail to the address of record of such designated party.

“(III) A copy of such notice.

“(iv) PROCESS FOR APPROVAL OF APPLICATIONS TO MODIFY OR TERMINATE QUALIFIED MEDICARE SET-ASIDES IN THE CASE OF MEDICAL IMPROVEMENT OR CHANGE OF CIRCUMSTANCES.—Subparagraphs (B) and (C) of paragraph (3) shall apply to requests submitted to the Secretary under clause (ii) to modify or terminate a Medicare set-aside in the same manner as such subparagraphs apply to Medicare set-aside agreements submitted to the Secretary under subparagraph (A) of such paragraph to be deemed qualified Medicare set-asides. In applying such subparagraphs (B) and (C), any reference to

1                   such subparagraph (A) shall be deemed a  
2                   reference to clause (ii), and any reference  
3                   in such subparagraph (B) to ‘the require-  
4                   ments of paragraph (2)(A)’ shall be  
5                   deemed to include a reference to the show-  
6                   ing required under clause (ii).

7                   “(v) EFFECTIVE DATES FOR MODI-  
8                   FICATIONS AND TERMINATIONS.—

9                   “(I) FOR DEATH OF CLAIM-  
10                  ANT.—In the case of a termination re-  
11                  quest under clause (i) that is ap-  
12                  proved, the termination shall take ef-  
13                  fect on the latter of the date on which  
14                  the showing described in such clause  
15                  has been provided to the Secretary, or  
16                  the date that is 60 days after the date  
17                  on which the individual entitled to dis-  
18                  bursement of the funds remaining in  
19                  the Medicare set-aside involved sends  
20                  the notice under clause (iii) to the  
21                  party designated for receipt of such  
22                  notice.

23                  “(II) FOR MEDICAL IMPROVE-  
24                  MENT OR CHANGE OF CIR-  
25                  CUMSTANCES.—In the case of a modi-

1 fication request or termination request  
2 under clause (ii) that is approved ac-  
3 cording to clause (iv), the modification  
4 or termination, respectively, shall take  
5 effect on the latter of the date of the  
6 approval or the date that is 60 days  
7 after the date on which the workers'  
8 compensation claimant involved sends  
9 the notice under clause (iii) to the  
10 party designated for receipt of such  
11 notice.

12 “(vi) TREATMENT OF REMAINING  
13 MEDICARE SET-ASIDE FUNDS.—Upon ter-  
14 mination or modification under this para-  
15 graph, any funds released from the set-  
16 aside shall revert pursuant to the terms of  
17 the settlement agreement, or if there is no  
18 reversionary clause, then such remaining  
19 funds shall be disbursed pursuant to the  
20 applicable State law.

21 “(7) TREATMENT OF STATE WORKERS’ COM-  
22 PENSATION LAW.—For purposes of this subsection  
23 and subsection (l), if a workers’ compensation settle-  
24 ment agreement is accepted, reviewed, approved, or  
25 otherwise finalized in accordance with the workers’

1 compensation law of the jurisdiction in which such  
2 agreement will be effective, such acceptance, review,  
3 approval, or other finalization shall be deemed con-  
4 clusive as to any and all matters within the jurisdic-  
5 tion of the workers' compensation law, including the  
6 determination of the total amount that could have  
7 been payable for a claim which is the subject of a  
8 compromise agreement in accordance with para-  
9 graph (2)(C)(iii). A determination made by applica-  
10 ble authority for a jurisdiction that a workers' com-  
11 pensation settlement agreement is in accordance  
12 with the workers' compensation law of the jurisdic-  
13 tion shall not be subject to review by the Sec-  
14 retary.”.

15 (c) CONFORMING AMENDMENTS.—Section 1862(b)  
16 of the Social Security Act (42 U.S.C. 1395y(b)), as  
17 amended by subsection (a), is further amended—

18 (1) in paragraph (2)(B)(ii), by striking “A pri-  
19 mary plan” and inserting “Subject to subsections (l)  
20 and (m), a primary plan”;

21 (2) in paragraph (2)(B)(iii)—

22 (A) in the first sentence, by striking “In  
23 order to recover payment” and inserting “Sub-  
24 ject to subsection (m), in order to recover pay-  
25 ment”; and

(B) in the third sentence, by striking “In addition” and inserting “Subject to subsection (m), in addition”; and

8       (d) MODERNIZING TERMINOLOGY FOR PURPOSES OF  
9 MEDICARE SECONDARY PAYER PROVISIONS.—Paragraph  
10 (2)(A) of such section is amended by striking “workmen’s  
11 compensation law or plan” and inserting “workers’ com-  
12 pensation law or plan” each place it appears.

13 SEC. 3. LIMITATION ON ADDITIONAL LIABILITY; SEVER-  
14 ABILITY.

(a) LIMITATION ON ADDITIONAL LIABILITY UNDER  
CURRENT AGREEMENTS EXCEPT FOR FRAUD.—Nothing  
in the Medicare secondary payer provisions in section  
1862(b) of the Social Security Act shall authorize the Sec-  
retary of Health and Human Services to impose liability  
that is additional to the liability in effect on the date of  
the enactment of this Act on the parties to a workers' com-  
pensation agreement the effective date of which is before  
such date of enactment, except in the case of fraud.

24 (b) SEVERABILITY.—If any provision of this Act or  
25 the amendments made by this Act or the application there-

1 of to any person or circumstance is held invalid, the re-  
2 mainder of this Act, the amendments made by this Act,  
3 or the application thereof to other persons not similarly  
4 situated or to other circumstances shall not be affected  
5 by such invalidation.

6 **SEC. 4. EFFECTIVE DATE.**

7 The amendments made by section 2 shall apply to  
8 a workers' compensation settlement agreement with an ef-  
9 fective date on or after the date of the enactment of this  
10 Act.



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